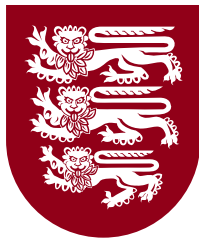


# STATES OF JERSEY



Jersey

## DRAFT JERSEY GAS COMPANY AMENDMENT LAW 202-

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Lodged au Greffe on 27th October 2025  
by the Minister for Justice and Home Affairs  
Earliest date for debate: 8th December 2025

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STATES GREFFE



Jersey

## **DRAFT JERSEY GAS COMPANY AMENDMENT LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Justice and Home Affairs has made the following statement –

In the view of the Minister for Justice and Home Affairs, the provisions of the Draft Jersey Gas Company Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy M.R. Le Hegarat of St. Helier North**  
*Minister for Justice and Home Affairs*

Dated: 24th October 2025

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## REPORT

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### Introduction

Following events involving gas in recent years, the Emergencies Council has had a particular focus on public safety and the security and continued supply of gas in Jersey.

Specifically, the Emergencies Council has noted the need for a timely flow of relevant information from the Jersey Gas Company Limited (the “Gas Company”).

The Draft Jersey Gas Company Amendment Law 202- (the Draft Amendment Law) would amend the [Jersey Gas Company \(Jersey\) Law 1989](#) (the “Gas Law”).

The Draft Amendment Law was initially lodged in March 2025. Following input from Scrutiny, the Gas Company and the Health and Safety Inspectorate (HSI), the Draft Amendment Law was withdrawn to take account of that feedback and, where necessary, improve the Draft Amendment Law.

### Purpose of the Draft Amendment Law

The purpose of the Draft Amendment Law is to provide the Minister for Justice and Home Affairs (the “JHA Minister”) with necessary and appropriate powers to be able to gather information from the Gas Company in a timely and proactive way.

The information gathered is intended to support the JHA Minister and other’s functions in respect of public safety and the security and continued supply of gas in Jersey, for example, the JHA Minister’s functions as the competent authority pursuant to the [Emergency Powers and Planning \(Jersey\) Law 1990](#) (the “Emergency Powers Law”).

In summary, if approved by the States Assembly, the Draft Amendment Law will insert into the Gas Law new Articles which will:

- Place an obligation on the Gas Company to notify the JHA Minister of the occurrence of certain reportable events or circumstances and comply with reporting requirements as set out in a direction made by the JHA Minister (see Article 89B).
- Place an obligation on the Gas Company to provide the JHA Minister with certain information when requested (see Article 89C).
- Set out which information is excluded, who the information can be provided to and what the information may be used for (see Articles 89D-89F).
- Establish a power to enter premises and require information (see Article 89G).
- Establish certain offences where those obligations are contravened (see Article 89H).
- Establish a Regulation-making power to amend the Gas Law and any other enactment in certain circumstances (see Article 97A).

### Background

The Gas Law sets out the constitution, organisation, powers and duties of the Gas Company. However, the Gas Law does not currently place obligations on the Gas Company to provide information to Ministers and others, either routinely or on request, to enable Ministers and others to carry out their functions relating to public safety and the security and continued supply of gas in Jersey.

Obligations on gas suppliers relating to the provision of information are established in other jurisdictions as part of licencing regimes and through licencing conditions.

Jersey does not have a licencing regime or licencing conditions applicable to the Gas Company over and above the very basic requirements of the Gas Law and does not place obligations relating to the provision of information on the Gas Company commensurate with comparative jurisdictions.

### **Ministerial Responsibility (see Article 89A “JHA Minister”)**

Although there are a number of Ministers who have functions relating to public safety and the security and continued supply of gas in Jersey<sup>1</sup>, the powers in the Draft Amendment Law are to be exercised by the JHA Minister.

It is considered that the JHA Minister is the most appropriate Minister for this purpose due to their function as:

- The “competent authority” pursuant to the Emergency Powers Law; and
- The Minister responsible for the Department for Justice and Home Affairs, which includes, for example, Emergency Planning Officer and the States of Jersey Fire and Rescue Service.

### **“Information” (see Article 89A)**

The Draft Amendment Law sets out a comprehensive definition of “information” mirroring similar definitions used elsewhere.

The Draft Amendment Law also sets out the circumstances in which the information must be provided to another person if so directed by the JHA Minister (see for example, Article 89B(1)). This is to ensure that the powers provided are operationally workable, for example, ensuring that in an emergency the right information is provided to the right person at the right time.

### **Obligation to notify the JHA Minister (see Article 89B)**

Following input from Scrutiny and the Gas Company, Article 89B has been updated to provide for:

- Consultation with the Gas Company to ensure that any reporting requirements are operationally workable in practice and understood by the Gas Company.
- Certainty through a direction to be made by the Minister which will provide a clear description of reporting requirements.
- Flexibility to allow different reporting requirements to be set for different reportable events or circumstances and in different situations to ensure that the reporting requirements are, and continue to be, proportionate and operationally workable.

The draft Amendment Law would therefore provide the following:

- The Company must notify the JHA Minister, or another person if so directed, of the occurrence or a reportable event or circumstance if notification is required by a direction published by the Minister.
- The Minister must consult with the Company before publishing such a direction.
- The Minister must publish a direction setting out the reporting requirements. Those reporting requirements may be different for different reportable events or circumstances.
- The reporting requirements may cover:

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<sup>1</sup> For example, the Minister for Infrastructure (pursuant to the Gas Law), the Minister for the Environment (in respect of energy policy), the Minister for Social Security (in respect of Health and Safety Inspectorate)

- Thresholds for notification including situations in which notification is not required or different notification requirements apply;
- The time when the Company must notify;
- Whom the Company must notify;
- How the Company must notify; and
- What information must be provided with the notification.

The reportable events or circumstances are:

- Events or circumstances that threaten, or potentially threaten, public safety or harm to people or property in Jersey in connection with the supply of gas;
- Events or circumstances that threaten, or potentially threaten, the security and continued supply of gas in Jersey;
- Events or circumstances that have, or may have, a material adverse effect on the ability of the Company to carry out its functions under an enactment, including a material adverse change in its financial position;
- A change in control of the Company, whether direct or indirect. “Control” means having the power to exercise decisive influence over its activities. In determining if that influence exists, all the circumstances are to be taken into account and not just the legal effect of any instrument, deed, transfer, assignment or other act.

These reportable events or circumstances cover a full range of scenarios in which the Minister may wish the Company to notify so that the Minister is able to fulfil their functions, for example, as competent authority for fuel, electricity and gas under the Emergency Powers Law.

### **Obligation to disclose information to the JHA Minister (see Article 89C)**

The Draft Amendment Law will place an obligation on the Gas Company to provide the JHA Minister, or another person if so directed, with the information requested at the time and in the form requested.

This is so that the JHA Minister can proactively obtain information from the Gas Company in order that the JHA Minister and others are able to carry out their functions.

This provision would, for example, enable the JHA Minister to undertake benchmarking to ensure that the Gas Company’s safety measures and service standards are in line with industry best practices.

This power is, however, subject to certain limits – the information must be requested by notice in writing and relate to public safety in connection with the supply of gas in Jersey and/or the security and continued supply of gas in Jersey, including how this may be affected by the financial position of the Gas Company.

In addition, the Minister must believe that: the information is necessary or expedient in the public interest; the Gas Company is in breach of the obligation to notify the JHA Minister or there is a material risk that it will breach that obligation; the Gas Company has breached another statutory duty or there is a material risk that it will do so; and/or, the information is necessary for undertaking benchmarking to ensure that the Gas Company’s safety measures and service standards are in line with industry best practices.

“Benchmarking” includes comparison with international best practices and data from countries and jurisdictions that the JHA Minister considers relevant to Jersey (see Article 89A).

**Excluded information, permitted recipients and permitted uses (See Articles 89D, 89E and 89F)**

The Draft Amendment Law will set limits on which information must be provided, who may receive the information provided, and how the information provided may be used.

These provisions strike a balance between the need to protect information provided by the Gas Company with the need for it to be disclosed to those who require it in order to be able to carry out their functions.

The intention of Article 89E and 89F is to permit the lawful provision of information to permitted recipients so that they can lawfully use that information only for the purposes set out. For the avoidance of doubt, Article 89F is not intended to, and does not, create or place new or additional functions on permitted recipients.

*Excluded Information (Article 89D)* – The Draft Amendment Law provides that the Gas Company is not required to disclose any information that is subject to legal privilege or is otherwise privileged from disclosure in civil proceedings; the Gas Company could not be compelled to give in evidence in civil proceedings; or is subject to any other enactment that prohibits disclosure.

*Permitted Recipients (Article 89E)* – The Draft Amendment Law limits the persons to whom the information provided may be disclosed. The policy intent of this Article is to ensure that any information received by MJHA can be lawfully provided to permitted recipients.

The Draft Amendment Law will provide that a person to whom information is provided under this Part must not disclose it without the consent of the Company except to the following permitted recipients (the permitted recipients):

- another Minister;
- an administration of the States<sup>2</sup>;
- the Emergencies Council; or
- a professional adviser of the JHA Minister or another permitted recipient who is under a duty of confidentiality.

*Permitted Uses (Article 89F)* – the Draft Amendment Law also limits the uses to which the information provided may be put. The policy intent is that a permitted recipient must not use the information provided without the consent of the Gas Company except:

- In accordance with, and in support of, the discharge of the JHA Minister’s or that permitted recipient’s functions under this Part of the Gas Law or under any other enactment – this permits the permitted recipient to use the information to discharge their statutory functions. For example, this would permit:
  - The JHA Minister to use it for the purposes of their functions as competent authority pursuant to the Emergency Powers Law;
  - The Emergencies Council to use it for the purposes of their functions pursuant to the Emergency Powers Law.
- In connection with provision of advice by a professional adviser of the JHA Minister or another permitted recipient – this permits the permitted recipient to provide it to a professional adviser for the purposes of the provision of, for example, legal or technical advice; or

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<sup>2</sup> Within the meaning of Article 1 of the [Freedom of Information \(Jersey\) Law 2011](#): “administration of the States” means (a) a department established on behalf of the States; and (b) a body, office or unit of administration, established on behalf of the States (including under an enactment);”. For the avoidance of doubt, this includes an inspector pursuant to the [Health and Safety at Work \(Jersey\) Law 1989](#).

- For a purpose mentioned in the Draft Amendment Law – Those purposes mentioned in the Draft Amendment Law are:
  - Assessing health and safety risks associated with the supply of gas;
  - Assessing risks to the security and continued provision of the supply of gas;
  - Emergency and contingency planning associated with health and safety relating to the supply of gas;
  - Emergency and contingency planning associated with the security and continued provision of the supply of gas;
  - Planning, organising and implementing measures designed to –
    - Maintain or make the best use of supplies of gas available for distribution;
    - Conserve and make the best use of supplies of fuel or other material available for the manufacture of gas;
    - Preserve public safety; or
    - Suspend or modify a restriction or obligation imposed on the Gas Company by or under an enactment or by a contractual obligation;
  - Monitoring the financial viability and solvency of the Gas Company; or
  - Undertaking benchmarking to ensure that the Gas Company’s safety measures and service standards are in line with industry best practices.

This would permit a permitted recipient to use it for its functions which not set out in statute. Such functions might include, for example, the operational responsibilities of government departments to assess health and safety risks associated with the supply of gas.

### **Power to enter premises and require information (see Article 89G)**

The Draft Amendment Law will also provide certain powers to the JHA Minister to support the exercise of the JHA Minister’s functions under this Part of the Gas Law.

Those powers are that the JHA Minister, or a person duly authorised by the JHA Minister, may: at a reasonable time and on production of evidence of authority if so required, enter premises, other than a premises used wholly or mainly as a private dwelling, to examine and take away documents or other material; and require a person to answer questions and provide information.

Following input from Scrutiny and the Gas Company, Article 89G and Article 89H have been updated to include safeguards against self-incrimination, such that a statement made by a person in compliance with the requirement to answer questions and provide information must not be used by the prosecution except for an offence under Article 89H(3). Further, the offence at Article 89H(3)(c) will only be committed where a person intentionally and without reasonable excuse obstructs a person exercising functions under Article 89G. A further protection added is the requirement that a person may only enter on production of evidence of authority if so required.

A person authorised by the JHA Minister may make investigations and report to the JHA Minister any findings relevant to the JHA Minister’s functions under this Part of the Gas Law.

### **Offences (See Article 89H)**

The Draft Amendment Law will also establish the criminal offences set out below.

The penalties for each of these offences have been reviewed by the Law Officers in the usual way.

*Corporate liability and liability of directors and officers*

The provisions of the draft Amendment Law will become part of the 1989 Law. Article 90(2) of the 1989 Law already sets out the circumstances in which a director, officer or any person purporting to act in such a capacity commit an offence where an offence is committed by the Company<sup>3</sup>.

#### *Article 89H(1) and (2)*

The Draft Amendment Law provides that a person<sup>4</sup> who contravenes Article 89B (the obligation to notify the JHA Minister) or Article 89C (the obligation to disclose information to the JHA Minister) commits an offence.

The obligations at 89B and 89C only apply to the “Company” not to individuals and, as such, only the Company, or in the circumstances set out at Article 90(2) of the 1989 Law, a director, officer or any person purporting to act in such a capacity, can commit this offence.

It is a defence for the defendant to prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

A person convicted of this offence would be liable to imprisonment for a term of 5 years and a fine.

The penalty is intended to convey the severity of the potential worst-case outcomes (public safety, harm to people or property, failure of the supply of gas to Jersey) should the MJHA not be notified as required by directions and is in line with other similar offences in recent Jersey Law.

It should be noted that the penalty expressed is a maximum penalty and any sentencing court will take the circumstances of the case into account in deciding the appropriate penalty in any given case. Further, if an offence is committed then it is still for the AG to determine (if the evidential test is met) whether it is in the public interest to prosecute.

#### *Article 89H(3) Offence*

The Draft Amendment Law provides that a person commits an offence if the person:

- knowingly or recklessly provides the JHA Minister or another person entitled to such information with information that is false or misleading in a material particular (Article 89H(3)(a));
- with intent to avoid compliance with Article 89B (the obligation to notify the JHA Minister) or Article 89C (the obligation to disclose information to the JHA Minister), or to avoid the detection of an offence under this Part, removes out of the jurisdiction, destroys, conceals or fraudulently alters any information, or causes or permits the removal, destruction, concealment or fraudulent alteration of that information (Article 89H(3)(b)); or
- Intentionally and without reasonable excuse obstructs a person exercising functions under Article 89G (power to enter premises and require information) (Article 89H(3)(c)).

A person convicted of this offence would be liable to imprisonment for a term of 7 years and a fine.

The penalty is intended to convey the severity of the potential worst-case outcomes (public safety, harm to people or property, failure of the supply of gas to Jersey) should materially false or

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<sup>3</sup> “Where an offence has been committed by the Company, and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, a director or officer of the Company, or any person who was purporting to act in such a capacity, the director, officer or person, as well as the Company, shall be guilty of that offence and liable to be proceeded against and punished accordingly”

<sup>4</sup> “person” includes any body of persons corporate or unincorporated ([Interpretation \(Jersey\) Law 1954](#))

misleading information be provided, information be destroyed, concealed or fraudulently altered, or investigations be obstructed.

It should be noted that the penalty expressed is a maximum penalty, any sentencing court will take the circumstances of the case into account in deciding the appropriate penalty in any given case. Further, if an offence is committed then it is still for the AG to determine (if the evidential test is met) whether it is in the public interest to prosecute.

### **Regulation-making power (see Article 97A)**

The Draft Amendment Law also provides that the States Assembly may by Regulations make amendments to the Gas Law and any other enactment if the amendments relate to the safety, security and provision of the supply of gas or the constitution, organisation, powers and duties of the Company.

This is so that the States Assembly has the power by Regulations to act quickly to make necessary amendments to legislation in relation to the safety, security and provision of the supply of gas, and the constitution, organisation, powers and duties of the Gas Company.

### **Commencement**

The Draft Amendment Law will come into force on a date to be specified by the JHA Minister by Order.

This is because the requirement at Article 89B for the JHA Minister to publish a direction is mandatory. It is therefore essential that a direction is published, following consultation with the Gas Company, at the same time that the Draft Amendment Law comes into force so that the JHA Minister is not in breach of that requirement.

### **Financial and staffing implications**

There are no immediate financial or staffing implications for the introduction and operation of the amendments to the Law, as any request made of the Gas Company once it is in force will be dealt with by staff already supporting the JHA Minister (and other Ministers) in the oversight of this work.

There is a potential future impact should the information shared by the Gas Company need to be shared (as provided for in the amendments to the Law) with professional advisers, who would be engaged on behalf of the JHA Minister at appropriate cost. This will be addressed as needed at the time by the relevant Department.

### **Children's Rights Impact Assessment**

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

**Human Rights Notes on the Draft Jersey Gas Company Amendment Law 202-**

These notes have been prepared in respect of the Draft Jersey Gas Company Amendment Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“ECHR”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law would, if adopted, create new criminal offences and penalty provisions in respect of the failure by the Jersey Gas Company (the “Company”) to provide notifications and information to the Minister for Justice and Home Affairs (the “Minister”); the provision of false or misleading information; the destruction of documents; and obstructing the exercise of the Minister’s powers. The Law Officers have approved the proposed provisions.

The draft Law would amend the Jersey Gas Company (Jersey) Law 1989 (the “1989 Law”) to insert a new Part 14A into the 1989 Law to, inter alia, require the Company to provide information to the Minister. The draft Law would impose a positive obligation on the Company with respect to the provision of information if specified events or circumstances occur, and the provision of information in response to a request from the Minister. The draft Law would also create a regulation making power to enable further amendments to be made to the 1989 Law and to any other enactment if it relates to the safety of gas and the constitution, organisation, powers and duties of the Company.

The draft Law engages Article 6 ECHR (right to a fair trial), Article 8 ECHR (the right to private and family life) and, to a lesser extent, Article 5 ECHR (the right to liberty and security). It is important to note that, wherever human rights are engaged, any measure introduced must be proportionate, and in that regard, the aim of the legislation will be considered. The primary aim of the provisions introduced by the draft Law is to ensure public safety, prevent harm to people and property in Jersey and to ensure continuity of the supply of gas.

Article 6 ECHR – right to a fair trial

The criminal offences in Article 3 of the draft Law, which will be introduced as Article 89H of the 1989 Law, potentially engage the criminal limb of Article 6 of the ECHR; the first two paragraphs of which provide:

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

Article 6(2) ECHR is relevant to Article 89H(1) i.e. contravention of the requirements in Article 89B or 89C to notify the Minister of specified events or circumstances; or to disclose information to the Minister. Article 6(2) ECHR is relevant here because Article 89H(2) introduces a defence for persons charged with these offences to prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence. Article 6(2) ECHR is potentially engaged by this defence as it is based around a reverse burden of proof i.e. it is for the person charged to show that they took reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Article 6(2) ECHR does not prohibit statutory provisions which transfer the burden of proof to the accused to establish the defence, provided the overall burden of establishing guilt remains with the prosecution. In addition, any rule shifting the burden of proof must be confined within “*reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence*”. A question which is typically asked in determining this issue is whether the burden imposed on the accused relates to something which is likely to be within his knowledge or to which he has ready access. In the case of the defence in Article 89H(2) it is reasonable to expect that all information relevant to the defence would be known to the person charged and not to the prosecutor (i.e. whether that person had taken reasonable precautions and exercised all due diligence). Balanced against the need to prevent harm to people and property in Jersey and ensure public safety there is no incompatibility with Article 6 ECHR arising in this aspect of Article 89H.

A further aspect of Article 89G that is relevant from an Article 6 ECHR perspective is Article 89G(2). Article 89G(2) provides that a statement made by a person in compliance with a requirement imposed under Article 89G(1)(b) must not be used by the prosecution in evidence against the person in any criminal proceedings except for an offence under Article 89H(3).

A person accused of a criminal offence has the right to remain silent and not to contribute to incriminating himself. The right to remain silent and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 ECHR. The privilege against self-incrimination exempts a person from being compelled to, inter alia, answer a question that might incriminate him in criminal proceedings and/or expose him to a penalty.

The privilege against self-incrimination is not absolute and may be limited by statute. Where legislation makes it compulsory for a person to answer questions, a provision typically applies to the effect that the answers provided cannot be used in a prosecution of the person, except in a prosecution for offences concerned with the relevant compulsory process under the Law, for instance, where the person gives untruthful, evasive or obstructive answers in response to questions put to the person. The privilege may be asserted by natural persons but generally does not extend to companies or other artificial entities.

The draft Law addresses this issue in Article 89G(2) by making provision for the privilege against self-incrimination where a person is compelled under Article 89G(1)(b) to give a statement, but applies a caveat so that the limitation expressed in Article 89G(2) does not extend to the use of statements made in evidence in prosecutions under Article 89H(3). Article 89H(3) is concerned with offences relating to the giving of false or misleading information, steps taken to avoid compliance with, or the detection of an offence under, new Part 14A, and intentional obstruction of the exercise of functions under Article 89G. Article 89G(2) does, therefore, provide an appropriately qualified safeguard against self-incrimination in the context of the draft Law, and which is assessed as being compatible for Article 6 ECHR purposes.

#### Article 8 ECHR – right to private and family life

Article 8 ECHR provides that:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Article 89G gives the Minister or persons duly authorised by the Minister powers, in exercise of the Minister's functions under new Part 14A of the 1989 Law, to enter premises and examine or take away documents, and to require a person to answer questions and provide information. Article 89B requires the Company to notify the JHA Minister, or another person if directed, of the occurrence of a reportable event or circumstance if notification is required by a direction of the Minister. These provisions may be considered to engage the right to private life in Article 8(1) ECHR.

The Article 8(1) ECHR right to 'private life' has been recognized as extending to the activities of a professional or business nature, and the exercise of information-gathering powers including rights to enter premises against private businesses or undertakings may engage the right to private and home life of those entities, depending on the circumstances.

The exercise of the power in Article 89G(1)(a) to enter premises and inspect documents may engage Article 8 ECHR. Given that the power is limited to premises other than premises used wholly or mainly as a private dwelling, and that the Company is a statutory body engaged in the provision of a public service, it is unlikely that the provision of information or right to enter premises to inspect documents in this context would be considered to materially engage or interfere with the private business of an individual. Similarly, the nature of the power in Article 89B and the likely scope of information that would need to be notified by the Company – which would be circumstantial information or matters relating to corporate aspects of the Company – are unlikely to materially engage Article 8 ECHR. However, the requirement to answer questions and provide information under Article 89G which might include the provision of personal information or correspondence may engage Article 8 ECHR.

In the context of the power to require a person to answer questions and provide information in Article 89G(1)(b), the Article 8(1) ECHR right to private life protects personal data, such as names and addresses. The right to home life, also protected under Article 8(1) ECHR, covers a right to respect for correspondence and the confidentiality of private communications. The right to respect for correspondence covers the private, family and professional sphere. The question of companies' correspondence is closely linked to that of searches of their premises. Therefore, the power to require the provision of information, which might take the form of correspondence or include personal data, from private persons or other entities could be considered an interference with the Article 8 ECHR right.

Any interference with the Article 8(1) ECHR right must be justified under Article 8(2) ECHR, meaning it must be: (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; and (c) necessary in a democratic society. 'Necessity' requires the identification of a pressing social need and the existence of "relevant and sufficient" reasons to justify the interference at issue. A measure will only be proportionate to the legitimate aim if supported by sufficiently persuasive reasons.

The nature of the interference constituted by the powers in Article 89G, would be deemed to be 'in accordance with the law' because those obligations and powers are contained in provisions which will have a basis in domestic law and which can be viewed as sufficiently precise and accessible. The exercise of the powers in Article 89G must be in accordance with the JHA Minister's functions under Part 14A. Those functions generally relate to public safety, security of

the gas supply, and emergency planning; as well as enabling the Minister to ascertain whether the Company is in breach of any of its obligations or duties. This would be categorised within the ‘public safety’ qualification in Article 8(2) ECHR.

‘*Necessary in a democratic society*’ requires there to be a pressing social need for the interference in question and that the interference is proportionate to the legitimate aim pursued. In the present case, it is reasonable to conclude that the powers in Article 89G are ‘necessary’ to prevent potential harm that might be caused to the public in connection with the supply of gas in Jersey, including potential threat to life, as well as ensuring the security and continued supply of gas, as this may be the only means by which the Minister may become aware of these events or information before the event occurs. Measures aimed at ensuring public safety in relation to the gas supply and continuity of the gas supply would be considered a ‘pressing social need’ and, balanced against those legitimate aims, any potential interference with Article 8 ECHR would be proportionate.

An important aspect in determining what is ‘*necessary in a democratic society*’ is the identification of procedural safeguards which mitigate the exercise of powers interfering with the Article 8(1) ECHR right. Safeguards ensure that a state remains within its margin of appreciation in fixing the applicable regulatory framework. The European Court of Human Rights has enunciated a list of safeguards which provide adequate protection against abuse of the Article 8 right, one of which is the requirement for the law to contain explicit and detailed provisions about how the powers interfering with Article 8 ECHR should be exercised.

In the draft Law, Article 89G specifies that the exercise of these powers must be related to the exercise of the JHA Minister’s functions under Part 14A. As mentioned in paragraph 14 above, the Minister’s functions under Part 14A relate to the supply of gas, emergency planning and public safety. Article 89G(1) limits who can exercise those powers to the Minister, or a person duly authorised by the Minister, and Article 89G(1)(a) specifically limits the exercise of the power to enter premises to reasonable times and premises other than those used as a private dwelling. The requirement in Article 89G(1)(a) to produce evidence of authority if requested to do so, serves as an additional safeguard on the exercise of this power. These safeguards are intended to operate to prevent excessive operation of the powers. Article 89E also places restrictions on who information can be shared with and Article 89F specifies the permitted uses for such information, both of which place additional safeguards on the use of information obtained using the Article 89G powers.

For these principal reasons, it is considered that the provisions in the draft Law are compatible with Article 8 ECHR.

#### Article 5 ECHR – right to liberty and security

Article 5(1)(a) ECHR provides:

*“... No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...*

*(b) the lawful detention of a person after conviction by a competent court;”*

Article 89H(1) provides for a penalty of 5 years’ imprisonment and an unlimited fine in respect of an offence under that paragraph and Article 89H(4) provides for a penalty of 7 years’ imprisonment and an unlimited fine in respect of an offence under paragraph 89H(3). The provision for a custodial sentence could be seen to engage Article 5 ECHR. However, given that this is prescribed by law and would only be imposed after a conviction by a competent Court, the penalties provided for in Article 89H would be an authorised deprivation of liberty under Article 5(1)(a) ECHR and therefore do not raise any issues of compatibility.

## EXPLANATORY NOTE

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This Law, if passed, will insert a new Part into the Jersey Gas Company (Jersey) Law 1989 (“the 1989 Law”) to require the Jersey Gas Company Limited (the “Company”) to provide information.

*Article 1* provides that it is the 1989 Law that is being amended.

*Article 2* inserts a new definition excluding the definition “Minister” (meaning the Minister for Infrastructure) from the new Part.

*Article 3* inserts new Part 14A, containing Articles 89A to 89H, into the 1989 Law. The provisions are:

- Article 89A, which contains 3 definitions specific to the Part, namely: a definition of “benchmarking”, “information” and “JHA Minister” meaning the Minister for Justice and Home Affairs.
- Article 89B, which creates an obligation for the Company to notify the JHA Minister (or another person if so directed by the Minister) of the occurrence of a “reportable event or circumstance” if required by a published direction of the Minister. The Minister must consult the Company before publishing a direction and the direction must set out the reporting requirements. These may differ for different types of event or circumstance, and cover the thresholds for notification, when, whom and how to notify and the information to be provided with the notification. The Article lists what are reportable events or circumstances, which relate to public safety, gas supply, the ability of the Company to carry out its functions, including a material adverse change in the Company’s financial position, and a change in the control of the Company.
- Article 89C, which creates an obligation for the Company to provide information to the Minister (or to another person if so directed by the JHA Minister) when directed by notice in writing if the information relates to public safety in connection with the supply of gas, or the security and continued supply of gas. The Minister may make the direction only if the Minister believes that the information is necessary or expedient in the public interest, if the Company has breached, or there is a material risk that it will breach, its obligation to notify the Minister under Article 89B, if it has breached, or there is a material risk that it will breach, another statutory duty, or to benchmark the Company’s safety measures and service standards in line with industry best practices.
- Article 89D, which states that the Company need not provide the information if it is subject to legal privilege, the Company could not be compelled to give it in evidence in civil proceedings or it is subject to any other enactment that prohibits disclosure.
- Article 89E, which states that unless the Company consents, the information provided under this Part must not be disclosed except to the Minister, an administration of the States, the Emergencies Council or a professional adviser who is under a duty to maintain confidentiality.
- Article 89F, which states that the persons listed in Article 89E must not use the information without the consent of the Company except in accordance with, and in support of, the discharge of the Minister’s or another person’s statutory responsibilities in connection with the provision of advice by a professional adviser or for a purpose specified in the Article.
- Article 89G, which authorises the JHA Minister (or a person authorised by that Minister), in exercising the JHA Minister’s functions, to enter premises, at a reasonable time and if so required on production of evidence of authority, to examine and take away documents or material or to require a person to answer questions and provide information. But a

person required to answer questions is protected against self-incrimination except in relation to the offences in Article 89H(3) (providing false information, destroying or concealing information or obstruction). A person authorised by the Minister may also investigate and report relevant findings to the Minister.

- Article 89H, which makes it an offence to contravene Articles 89B or 89C. There is a defence of exercising due diligence and taking all reasonable steps to avoid committing an offence under Articles 89B or 89C. There are also offences of providing false information or destroying or concealing information and obstructing a person exercising functions under Article 89G. The penalty for an offence contravening Articles 89B or 89C is imprisonment for up to 5 years and/or a fine. The other offences carry a penalty of up to 7 years' imprisonment and/or a fine.

*Article 4* inserts a provision enabling the States by Regulations to amend the 1989 Law or any other enactment relating to the safety, security and provision of the supply of gas or the constitution, organisation, powers and duties of the Company.

*Article 5* provides for how the draft Law is to be cited and for it to come into force by Order of the Minister for Justice and Home Affairs.



Jersey

## **DRAFT JERSEY GAS COMPANY AMENDMENT LAW 202-**

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Jersey

## DRAFT JERSEY GAS COMPANY AMENDMENT LAW 202-

A LAW to amend the [Jersey Gas Company \(Jersey\) Law 1989](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

**1 [Jersey Gas Company \(Jersey\) Law 1989](#) amended**

This Law amends the [Jersey Gas Company \(Jersey\) Law 1989](#).

**2 Article 1 (interpretation) amended**

In Article 1, for the definition “Minister” there is substituted –

“Minister” (except in Part 14A) means the Minister for Infrastructure;

**3 Part 14A (power to require company to provide information) inserted**

After Article 89 there is inserted –

### PART 14A

#### POWER TO REQUIRE COMPANY TO PROVIDE INFORMATION

**89A Interpretation**

In this Part –

“benchmarking” includes comparison with international best practices, benchmarks and data from countries and jurisdictions that the JHA Minister considers relevant to Jersey;

“information” means information in any form or of any description, including documents, accounts, estimates, returns, records, reports and data;

“JHA Minister” means the Minister for Justice and Home Affairs.

### **89B Obligation to notify JHA Minister**

- (1) The Company must notify the JHA Minister, or another person if so directed by that Minister, of the occurrence of a reportable event or circumstance if notification is required by a direction of the Minister published under paragraph (2).
- (2) The Minister, having consulted the Company, must publish a direction that sets out reporting requirements, which may be different for different reportable events or circumstances, and which may cover –
  - (a) the thresholds for notification, including situations in which notification is not required or different notification requirements are to apply;
  - (b) the time when the Company must make the notification;
  - (c) whom the Company must notify;
  - (d) how the Company must make the notification; and
  - (e) what information must be provided with the notification.
- (3) The reportable events or circumstances are –
  - (a) events or circumstances that threaten, or potentially threaten, public safety or harm to people or property in Jersey in connection with the supply of gas;
  - (b) events or circumstances that threaten, or potentially threaten, the security and continued supply of gas in Jersey;
  - (c) events or circumstances that have, or may have, a material adverse effect on the ability of the Company to carry out its functions under an enactment, including a material adverse change in its financial position; and
  - (d) a change in control of the Company, whether direct or indirect.
- (4) In this Article, “control” in relation to the Company, means having the power to exercise decisive influence over its activities.
- (5) In determining if that influence exists, all the circumstances are to be taken into account and not just the legal effect of any instrument, deed, transfer, assignment or other act.

### **89C Obligation to disclose information to JHA Minister**

- (1) The Company must provide the JHA Minister, or another person if so directed by that Minister, with the information requested at the time and in the form requested –
  - (a) if that Minister directs by notice in writing;
  - (b) if the information relates to 1 or both matters set out in paragraph (2); and
  - (c) if that Minister believes that 1 or more of the situations set out in paragraph (3) exist.

- (2) The matters are –
  - (a) public safety in connection with the supply of gas in Jersey; and
  - (b) the security and continued supply of gas in Jersey, including how this may be affected by the financial position of the Company.
- (3) The situations are –
  - (a) that the information is necessary or expedient in the public interest;
  - (b) that the Company is in breach of Article 89B (obligation to notify JHA Minister) or there is a material risk that it will breach that Article;
  - (c) that the Company has breached another statutory duty or there is a material risk that it will do so; and
  - (d) that the information is necessary for undertaking benchmarking to ensure that the Company's safety measures and service standards are in line with industry best practices.

#### **89D Excluded information**

Nothing in this Part requires the Company to provide any information if –

- (a) it is subject to legal privilege or is otherwise privileged from disclosure in civil proceedings;
- (b) the Company could not be compelled to give it in evidence in civil proceedings; or
- (c) it is subject to any other enactment that prohibits disclosure.

#### **89E Permitted recipients**

A person to whom information is provided under this Part must not disclose it without the consent of the Company except to –

- (a) another Minister;
- (b) an administration of the States (within the meaning of Article 1 of the [Freedom of Information \(Jersey\) Law 2011](#));
- (c) the Emergencies Council constituted by Article 1 of the [Emergency Powers and Planning \(Jersey\) Law 1990](#); or
- (d) a professional adviser of –
  - (i) the JHA Minister; or
  - (ii) a person listed in this Article who is under a duty of confidentiality.

#### **89F Permitted uses**

- (1) A person listed in Article 89E must not use information provided under this Part without the consent of the Company except –
  - (a) in accordance with, and in support of, the discharge of the JHA Minister's or that person's functions under this Part or under any other enactment;
  - (b) in connection with the provision of advice by a person mentioned in Article 89E(e); or

- (c) for a purpose mentioned in paragraph (2).
- (2) The purposes are –
  - (a) assessing health and safety risks associated with the supply of gas;
  - (b) assessing risks to the security and continued provision of the supply of gas;
  - (c) emergency and contingency planning associated with health and safety relating to the supply of gas;
  - (d) emergency and contingency planning associated with the security and continued provision of the supply of gas;
  - (e) planning, organising and implementing measures designed to –
    - (i) maintain or make the best use of supplies of gas available for distribution;
    - (ii) conserve and make the best use of supplies of fuel or other material available for the manufacture of gas;
    - (iii) preserve public safety; or
    - (iv) suspend or modify a restriction or obligation imposed on the Company by or under an enactment or by a contractual obligation;
  - (f) monitoring the financial viability and solvency of the Company; or
  - (g) undertaking benchmarking to ensure that the Company's safety measures and service standards are in line with industry best practices.

### **89G Power to enter premises and require information**

- (1) In exercising the JHA Minister's functions under this Part, that Minister or a person duly authorised by them may –
  - (a) at a reasonable time and, if required, on production of evidence of authority, enter premises, other than premises used wholly or mainly as a private dwelling, to examine and take away documents or other material; and
  - (b) require a person to answer questions and provide information.
- (2) A statement made by a person in compliance with a requirement imposed under paragraph (1)(b) must not be used by the prosecution in evidence against the person in any criminal proceedings except for an offence under Article 89H(3).
- (3) A person authorised by the Minister under this Article may make investigations and report to the Minister any findings relevant to the Minister's functions under this Part.

### **89H Offences under this Part**

- (1) A person who contravenes Article 89B or 89C commits an offence and is liable to imprisonment for a term of 5 years and to a fine.
- (2) In proceedings for an offence under paragraph (1) it is a defence for the defendant to prove that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

- (3) A person commits an offence if the person –
  - (a) knowingly or recklessly provides the JHA Minister or another person entitled to information under this Part with information that is false or misleading in a material particular;
  - (b) with intent to avoid compliance with Article 89B or 89C, or to avoid the detection of an offence under this Part, removes out of the jurisdiction, destroys, conceals or fraudulently alters any information, or causes or permits the removal, destruction, concealment or fraudulent alteration of any information; or
  - (c) intentionally and without reasonable excuse obstructs a person exercising functions under Article 89G.
- (4) A person guilty of an offence under paragraph (3) is liable to imprisonment for a term of 7 years and to a fine.

#### **4 Article 97A (power to amend enactments by Regulations) inserted**

After Article 97 there is inserted –

##### **97A Power to amend enactments by Regulations**

The States may by Regulations make amendments to this Law and any other enactment if the amendments relate to the safety, security and provision of the supply of gas, or the constitution, organisation, powers and duties of the Company.

#### **5 Citation and commencement**

This Law may be cited as the Jersey Gas Company Amendment Law 202- and comes into force on a day to be specified by the Minister for Justice and Home Affairs by Order.